

PUBLIC FINANCING EXPLANATION

(REVISED 8/10/11)

QUESTION	ANSWER	Code Citation
To which election does it apply?	Two elected Justices for WV Supreme Court of Appeals in primary and general elections of 2012.	§3-12-4
Is participation mandatory?	No. Candidates may voluntarily accept the funding and must comply with all funding law requirements if they accept.	§§3-12-4 and 3-12-7
Do other state election laws still apply?	Yes. The special rules and restrictions on Public Financing are in addition to all other election laws.	
When may persons begin participating?	Candidates may begin collecting exploratory contributions and making exploratory expenditures, to determine his or her chances of election and qualification for Public Financing, as early as 1/1/2011. Candidates must first file a pre-candidacy certificate with the Secretary of State. For candidates who file pre-candidacy prior to 1/1/2011, any unexpended or undedicated contributions remaining as of 1/1/2011 are deemed to be exploratory contributions and count toward a \$20,000 exploratory contribution limit.	§3-12-3(5) §3-8-5e §3-12-8(a)
What limits apply to exploratory contributions?	Exploratory contributions: <ul style="list-style-type: none"> • Cannot exceed \$20,000 in aggregate – excess amounts are given to the Public Financing Fund. • Individuals may not contribute more than \$1,000. • Contributions may be made by family and by out-of-state residents. • Candidate may not loan more than \$1,000 to his or her own campaign. 	§3-12-8(a)

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(REVISED 8/10/11)

What are reporting requirements of exploratory contributions & expenses?	<p>Candidates must:</p> <ul style="list-style-type: none"> • Provide a receipt for each contribution (forms from Secretary of State). • Disclosure information required on receipt for up to \$250 contribution: <ul style="list-style-type: none"> ○ Contributor's name; ○ Contribution amount; ○ Anything else required by §3-8-5a. • Disclosure information required for receipt over \$250 contribution: <ul style="list-style-type: none"> ○ Contributor's name; ○ Residence; ○ Mailing address; ○ Business affiliation; ○ Occupation. 	§3-12-8(b)
	<p>During Exploratory Period, candidates must:</p> <ul style="list-style-type: none"> • On the 1st of each month, • Report to Secretary of State: <ul style="list-style-type: none"> ○ All contributions; ○ All expenditures; ○ Copy of all receipts. <p>Reports must be filed electronically.</p> <ul style="list-style-type: none"> • Candidate may petition SEC for exemption from electronic filing. 	§3-12-8(c)
When does Exploratory Period end?	At time candidate files Declaration of Intent to receive public financing, or No later than last Saturday in January [1/28/2012].	§3-12-7 §3-12-3(5)
What happens if candidate chooses to not seek public financing?	Candidate may then keep all exploratory contributions, including those in excess of \$20,000, and is subject to regular campaign financing laws.	

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(REVISED 8/10/11)

<p>What steps must a candidate take before becoming eligible for public financing?</p>	<p>First, the candidate must file with the State Election Commission a <u>Declaration of Intent</u> (form provided by SEC) which contains a statement that the candidate:</p> <ul style="list-style-type: none"> • Is qualified to be placed on the ballot; • If elected, is eligible to hold the office sought; • Has complied with, and will continue to comply with, all requirements of the public financing law including restrictions on contributions and expenditures. <p>Next, the candidate must raise a certain number and amount of qualifying contributions. Exploratory and other contributions obtained prior to filing the Declaration of Intent are not counted towards qualification requirements.</p>	<p>§3-12-7</p> <p>§3-12-9</p>
<p>When is the Qualifying Period?</p>	<p>For candidates seeking nomination in the primary election:</p> <ul style="list-style-type: none"> • From 9/1/2011 until the candidate is certified as eligible or • Until 1/28/2012. <p>For candidates seeking nomination by petition:</p> <ul style="list-style-type: none"> • From 6/1/2012 until 10/1/2012. 	
<p>What qualifying contributions must be raised and what restrictions apply?</p>	<p>The candidate must obtain:</p> <ul style="list-style-type: none"> • At least 500 contributions which, • Total at least \$35,000 but no more than \$50,000; • Are from WV registered voters; • No single contribution may exceed \$100; • At least 10% of all the contributors must reside in each of W.Va.'s Congressional Districts. <p>Candidate and family members may each make one contribution. Candidate may not use other personal funds to satisfy the requirements.</p> <p>Amounts raised in excess of \$50,000 go to the public financing fund.</p>	<p>§3-12-9(c)</p> <p>§3-12-9(a)</p> <p>§3-12-9(c)</p> <p>§3-12-9(a)</p> <p>§3-12-9(c)</p> <p>§3-12-9(d)</p> <p>§3-12-9(a)</p>

PUBLIC FINANCING EXPLANATION

(REVISED 8/10/11)

<p>What reporting requirements exist for qualifying contributions?</p>	<p>Receipts must be given for each contribution (forms provided by Secretary of State) and filed, electronically, with the Secretary at the <u>first of each month</u>. Receipts must provide the following information:</p> <ul style="list-style-type: none"> • Printed name of candidate; • Signature of collector of contribution; • Statement above contributor's signature that: <ul style="list-style-type: none"> ○ Contributor understands purpose is to qualify candidate for public financing; ○ Contribution made without coercion; ○ Contributor has not been reimbursed or promised anything of value. • For contributions of \$25 or more: <ul style="list-style-type: none"> ○ Signature of the contributor; ○ Printed name; ○ Street address and zip code; ○ Telephone number; ○ Occupation; and ○ Name of employer. • For contributions of less than \$25: <ul style="list-style-type: none"> ○ Signature of the contributor; ○ Printed name; ○ Street address and zip code. <p>A final report of all contributions and expenditures must be reported to the Secretary of State within two business day of the close of qualifying period.</p>	<p>§3-12-9(b)</p> <p>§3-12-9(f)</p> <p>§3-12-9(b)</p> <p>§3-12-9(g)</p>
<p>What does the candidate do when he or she has raised sufficient qualifying contributions?</p>	<p>The candidate must <u>APPLY</u> to the SEC (form provided by SEC) for funding.</p> <p>The application must contain a sworn statement by the candidate that he or she has complied, and will continue to comply, with all public financing laws.</p>	<p>§3-12-10(a)</p>

PUBLIC FINANCING EXPLANATION

(REVISED 8/10/11)

<p>What happens after the candidate applies?</p>	<p>The Secretary of State verifies that the required numbers and amounts of contributions have been received.</p> <p>Within three business days after the Secretary's determination, the SEC must determine that the candidate:</p> <ul style="list-style-type: none"> • Has signed and filed the Declaration of Intent; • Has obtained required numbers and amounts; • Has complied with contribution restrictions; • Is eligible, per §3-5-9, to appear on the ballot; • Has met all other requirements of the public financing law. <p>Within two business days of a favorable determination, SEC causes State Auditor and Treasurer to issue a check to candidate</p>	<p>§3-12-10(b)</p> <p>§3-12-10(c)</p>
<p>May contributions be challenged?</p>	<p>Yes.</p> <p>Receipts are posted on-line by the Secretary of State and any person may submit a challenge to the SEC (forms provided) stating the basis for the challenge.</p> <p>By end of next business day, SEC must determine validity of challenge.</p> <p>There are two exceptions:</p> <ul style="list-style-type: none"> • If candidate has enough contributions to qualify even without the challenged contribution, SEC does not have to decide the challenge; • IF SEC rejects any contribution, candidate may replace challenged contribution with another contribution within five days of the challenge and still qualify for funding. 	<p>§3-12-10(g)</p>

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(REVISED 8/10/11)

<p>How much money does candidate receive?</p>	<p>For the primary election, the candidate receives:</p> <ul style="list-style-type: none"> • If unopposed, \$50,000 <u>less the amount of qualifying contributions raised</u>; • If opposed, \$200,000 <u>less the amount of qualifying contributions raised</u>. <p>Two days after the primary election is certified, the candidate receives for the general election:</p> <ul style="list-style-type: none"> • If unopposed, \$35,000, <u>less any unspent or unobligated primary funds</u>; • If opposed, \$350,000, <u>less any unspent or unobligated primary funds</u>. <p>If the Fund does not contain enough monies to make full payments to all candidates, the amount available will be paid pro rata.</p> <p>If the Fund does not contain enough monies, candidates may raise additional monies up to the full-funding amount by private contributions.</p>	<p>§3-12-11(a)</p> <p>§§3-12-11(b) and 3-12-12(e)</p> <p>§3-12-11(d)</p>
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(REVISED 8/10/11)

<p>May a candidate ever receive additional funding?</p>	<p>Yes.</p> <p>Non-participating candidates, and persons making independent expenditures, must report expenditures to the SEC (see reporting requirement sections below).</p> <p>Once an opponent, or a person making an independent expenditure, or a combination of both, expends 120% of the amount of Public Financing available to the candidate, the candidate will be paid additional monies to equalize the amounts spent.</p> <p>After the initial 120% expenditure threshold has been reached, additional equalizing payments are approved by the SEC each time additional spending is reported by non-participating candidates and persons making independent expenditures.</p> <p>Total equalizing payments approved by the SEC for the campaign may not exceed:</p> <ul style="list-style-type: none">• an additional \$400,000 for the primary;• an additional \$700,000 for the general election. <p>THIS PART OF THE LAW RULED UNCONSTITUTIONAL BY US SUPREME COURT AND WV ATTORNEY GENERAL</p>	<p>§3-12-11(e)-(g)</p> <p>§3-12-11(h)</p>
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<p>May a candidate later decide to withdraw from the Public Financing option and run as a privately funded candidate?</p>	<p>Candidate who withdraws from the Public Financing option and participates as a non-participating candidate,</p> <ul style="list-style-type: none"> • Must receive approval for withdrawal by the SEC; and • Must refund any Public Financing received <p>The SEC, in exceptional circumstances, may waive the repayment requirement.</p> <p>If a candidate withdraws from participation without receiving SEC approval, a penalty of up to \$10,000 may be imposed.</p>	<p>§3-12-10(j)</p>
<p>What are the reporting requirements for participating candidates?</p>	<p>Participating candidates must comply with all campaign finance reporting requirements in the regular election law.</p> <p>Participating candidates must also submit, on the first of each month during the exploratory and qualifying periods (forms provided by Secretary of State):</p> <ul style="list-style-type: none"> • A report of contributions and • Expenses during the preceding month; and • Receipts for each contribution. <p>Participating candidates must submit a final report, (forms provided) within 2 business days of the close of the qualifying period, a summary of:</p> <ul style="list-style-type: none"> • all exploratory contributions, expenditures and receipts • all qualifying contributions, expenditures and receipts. 	<p>§3-12-13(a)</p> <p>§3-12-13(b)</p> <p>§3-12-13(c)</p>

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(REVISED 8/10/11)

<p>What are the reporting requirements for non-participating candidates?</p>	<p>In addition to campaign finance reports required in regular election code, non-participating candidates must report (forms provided by Secretary of State) itemized summary of expenditures and obligations on the following schedule:</p>	<p>§3-12-13(e)</p>
<p>NOTE: PARTS OF THIS LAW RULED UNCONSTITUTIONAL BY US SUPREME COURT AND WV ATTORNEY GENERAL.</p>	<ul style="list-style-type: none"> • 1st Saturday in March — or within 6 days thereafter [3/12/2012] — expenditures and obligations that exceed initial funding available to participating candidate. • 1st Sat. April [4/7/2012] — expenditures, exceeding initial funding available, made subsequent to expenses reported in the §3-8-5(b)(1) campaign finance report [a.k.a. “First Primary Report”] that is due 6 days after last Saturday in March. 	<p>§3-12-13(e)(1)</p> <p>§3-12-13(e)(2)</p>
	<ul style="list-style-type: none"> • Within 48 hours of any expenditures, exceeding initial funding available, made prior to 15th day before Primary • Within 24 hours of any expenditures, exceeding initial funding available, made during last 15 days before the Primary. • 1st Saturday in July — or within 6 days thereafter [7/13/2012] — expenditures and obligations, exceeding initial funding available, made since Primary and prior to July 1. • 1st Sat. October [10/6/2012] — expenditures, exceeding initial funding available, made subsequent to expenses reported in the §3-8-5(b)(4) campaign finance report [a.k.a. “First General Report”] that is due 43 days prior to General election. • Within 48 hours of any expenditures, exceeding initial funding available, made prior to 15th day before General. • Within 24 hours of any expenditures, exceeding initial funding available, made during last 15 days before the General. 	<p>§3-12-13(e)(2)</p> <p>§3-12-13(e)(5)</p> <p>§3-12-13(e)(3)</p> <p>§3-12-13(e)(4)</p> <p>§3-12-13(e)(4)</p> <p>§3-12-13(e)(5)</p>

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<p>What are the reporting requirements for persons making independent expenditures for the Supreme Court election?</p>	<p>Persons making independent expenditures,</p> <ul style="list-style-type: none"> • In excess of \$1,000, • Supporting or opposing any candidate, must report expenditures to SEC (form provided), • Within 48 hours of expenditure. <p>During last 15 days before Primary or General election, must report to Secretary of State:</p> <ul style="list-style-type: none"> • Within 24 hours of expenditure; • By facsimile, hand-delivery, or other means to insure receipt within 24 hours. 	<p>§3-12-13(f)</p> <p>§3-12-13(g)</p> <p>§3-8-2(b)</p> <p>§3-8-2(b)</p>
<p>What new duties are given to the Secretary of State and the State Election Commission?</p>	<ul style="list-style-type: none"> • Promulgate rules for this process. • Develop necessary forms. • Audit the receipts. • Publish and display submitted receipts and reports. • Prepare a Voters' Guide. • Prepare instructions for record keeping for candidates. • Prepare explanation of law for candidates and public. • Levy and collect civil penalties for non-compliance. 	<p>§3-12-14(a) & (b)</p> <p>§3-12-16</p>
<p>May candidate become disqualified?</p>	<p>Yes.</p> <p>SEC may revoke candidate's certification and require full repayment of all Public Financing funds received if candidate violates any provisions of Public Financing laws.</p>	<p>§3-12-10(h)</p>

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May candidates incur civil penalties?	<p>Yes.</p> <p>The SEC may levy civil penalties payable to the Fund for:</p> <ul style="list-style-type: none"> • Unintentional acceptance of contributions, or payment of expenses, in excess of those allowed by law: <ul style="list-style-type: none"> ○ Optional fine of amount equal to excess contribution or expense. • Intentional acceptance of excess contributions or payment of excess expenses: <ul style="list-style-type: none"> ○ Mandatory fine of 10X the amount of excess contribution or expense. • Failure to pay monies required to be paid to Fund: <ul style="list-style-type: none"> ○ Optional fine equal to 3X amount that was due. • Failure to file required report: <ul style="list-style-type: none"> ○ Optional fine of \$100 per day late, ○ Fine doubled if amount not reported exceeds 10% of initial amount available to candidate. 	<p>§3-12-16(a)</p> <p>§3-12-16(b)</p> <p>§3-12-16(c)</p> <p>§3-12-16(d)</p>
May candidates incur criminal penalty?	<p>Yes.</p> <p>Knowingly accept excess contribution, or make excess expenditure, or uses for not allowed purposes:</p> <ul style="list-style-type: none"> • Misdemeanor. • \$50-\$500 fine, or • Confined in jail up to 30 days, or • Both fine and confinement. <p>Providing false information to, or conceals information from, Secretary of State or SEC:</p> <ul style="list-style-type: none"> • Misdemeanor; • \$1,000 - \$10,000 fine, or • Up to 1 year confinement in jail, or • Both fine and confinement. 	<p>§3-12-15(a)</p> <p>§3-12-15(b)</p>